

City Council Minutes

October 13, 2003

The Council of the City of Milton-Freewater met in regular session on Monday, October 13, 2003 at 7:00 p.m. in the council chambers of City Hall.

The following members were present: Mayor Key, Councilors Saager, Lyon, Humbert, Woods, Records and Kelley. Staff members present were City Manager Delphine Palmer, Assistant City Manager Linda Hall, Finance Director Dave Richmond, City Planner Gina Hartzheim, Fire Chief Sam Hubbard, Police Chief Mike Gallaher and Grant Writer Mike Watkins. Citizens present were Curtis Walters, Randy Shepherd, Sonja Shepherd, Mike Onstot, Bryan Bailey, Mike Swinnerton, Robbi Swinnerton, Ron Brown, Gretchen Brown and others.

Members of the press present were Jeff Durham of the Blue Mountain Pioneer and Susan Brooks of the East Oregonian, and Dennis Widmer of the Valley Herald.

PROCLAMATION. Mayor Key read the proclamation proclaiming October 26th as Effie Ritchey Day for her past contributions to the City.

CONSENT CALENDAR ITEMS: Items on the consent calendar include minutes from the September 22, 2003 meeting. Councilor Kelley moved to adopt the Consent Calendar and Councilor Records seconded the motion which passed unanimously.

Mayor Key announced this was the opportunity for citizens to approach the council with items not on the agenda. None approached.

NEW BUSINESS

PUBLIC HEARING. Appeal by Randy Shepherd of the Planning Commission's Decision regarding the PGG Propane Tank location.

Mayor Key opened the hearing and summarized the rules for Public Hearing.

No ex parte contact was declared.

Mayor Key asked if notice of the hearing had been published according to law. Assistant City Manager Linda Hall stated that this had been done. Mayor Key then asked if there had been any written comments. Ms. Hall replied that none had been received.

Mayor Key asked for the City Planner to give the staff report. City Planner Gina Hartzheim stated this public hearing was scheduled as a result of the decision made by the Planning Commission under a conditional use permit application to allow siting of a bulk propane facility by PGG (Pendleton Grain Growers). The subject property PGG requested the siting on is located on NE First Avenue. This particular piece of property, neighboring many of PGG properties in the neighborhood, is a C-1 zone. Several of the properties in the area are zoned Industrial, but

this particular piece is a C-1 zone. Originally, at the Planning Commission level, the application was for a facility that would support an approximate 18,000 gallon tank. The facility would only be accessed by PGG personnel. It would be designed specifically for bulk propane not available to the general public. At the Planning Commission level, devices were required to ensure the public could not have access to the facility by way of fencing. The criteria council will be reviewing this evening as it relates to the conditional use permits, are the same criteria that was related at the Planning Commission level and Ms. Hartzheim went through that criteria.

The first set of criteria relates to the properties C-1 zone, therefore PGG was required to apply to the Planning Commission for a conditional use permit based partially on the fact that there are a lot of industrial uses surrounding the property that could be considered for possible compatible use. Other criteria used by the Planning Commission were size of the lot, potential building height, traffic circulation, landscaping, noise, glare from lighting and hours of operation. There were a lot of general issues that, in this specific case, does not address health or public safety as criteria for whether or not the planning commission could originally consider under a conditional use permit. Based on the fact that the property is bordered by several industrial uses, the reasonable compatibility, for at least the planning commission to initially review, was found to be satisfied.

The general criteria for conditional use permits are: The property has properly addressed traffic flow and interaction with public streets. This criterion was met. The second criterion is to determine if the parcel is a sufficient size to allow the use and any landscaping that may be used. This criterion was determined to be adequate. The third criterion relates to the compatibility to adjacent property, along with public safety, traffic, noise and hours of operation issues. The public safety issue came to light after the appeal, but Ms. Hartzheim did say that there are several safety features found in these tanks as was testified at the Planning Commission meeting. Additional safety features were recommended at the staff level, that a secondary fencing should be placed around the valve assembly and the entire facility would be contained within perimeter fencing. Some concerns that have arisen since the appeal are the several residences in proximity of the proposed site, and there has been recent information received by the City with regard to Homeland Security. Some released studies addressed the potential for terrorist attacks on bulk storage facilities, not just propane, but all bulk facilities. Potential fire hazard was addressed in these reports as well. This report was hard to ignore when neighboring residents became at risk.

Ms. Hartzheim stated that because this is additional information supplemented since the original planning commission hearing, PGG is entitled to request a minimum seven (7) day continuance to address this information as it was not available at the planning commission level. Also this evening, Ms. Hartzheim was approached by a property owner in the neighborhood that believes he is located within 200 feet of the property, and the City is required to notify property owners within 200 feet. Ms. Hartzheim did not have the exact measurements with her, but stated that this person was here and can testify.

Ms. Hartzheim stated that although there are many safety features involved in the proposed site, the potential for risk, whether accidental or by sabotage, outweighs the safety measures that can be implemented, therefore staff recommends upholding the appeal resulting in denial of planning commission's decision.

Mayor Key invited the appellant to come forward to address council. Randy Shepherd, 110 NE 1st, thanked council for the opportunity to represent himself and his family with regard to the issue of the proposed propane tank installation. Mr. Shepherd said he realized that there are always different sides to an issue and respectfully asked that the issue be considered for the safety and peace of mind for his family, neighbors and students of our high school. Mr. Shepherd said he felt that if the tank were installed, there could be a loss in property value. In closing, Mr. Shepherd told council to consider the question, "Would they like this tank next to their house?"

Mayor Key invited those who were in support of the appeal to address council. None approached.

Mayor Key then invited those in opposition of the appeal to come forward. Bryan Bailey, 116 NE 1st, representing PGG, stated that even in light of the new information that came about with the appeal with the homeland security act, there are mandatory procedures in place on a vulnerability assessment at each one of the company's sites to meet the new homeland security act. PGG is in the process of this assessment on all of their existing plants and the information is given to an engineering counseling firm to determine the potential threat to surrounding residents and/or businesses. With the installation of the proposed tank, there is a requirement called an RMP (Risk Management Plan), which is an emergency response plan, where an engineer comes to the plant and assesses the worst-case-scenario. All of this is documented and then given to the Fire Chief for review. Mr. Bailey stated he went with Fire Chief Sam Hubbard along with State Fire Marshal Scott Goff to the proposed site and it was suggested to install an unmanned monitor due to the Chief's concern about his firefighters in the event of fire. Mr. Bailey said that the information on the internet regarding fires, were started mostly by some kind of vehicle running into them. This scenario was then discussed to determine what, if any, risk would be involved. The tanks will be mounted on engineered, concrete saddles at about 3 ½ to 4 feet off the ground. At the planning commission level it was discussed that PGG would place crash posts or manufactured concrete barriers completely around the tank itself, thus removing the potential for any crash into the tank. There are times that propane tanks catch fire because they are exposed to another fire, such as a house fire in proximity of the tank. This scenario was discussed and it was determined there was not enough materials within the buildings surrounding the tank to create a fire hazard. All propane tanks, small or large, 5 gallon to 60,000 gallon, are designed the same with the same safety features built into each tank. On all bulk storage tanks, there are added safety features to eliminate the potential for release. All valves on the propane tanks come out of the bottom of the tank. The valves on top are only used as safety release valves, which are there to prevent the tank from exploding. Most explosions occur as a malfunction of the release valves as they provide an automatic reaction to the pressure gages. Mr. Bailey said he feels that PGG is taking all precautions to eliminate any potential hazard to any of the businesses and residents. PGG has their own store in close proximity and they would not do anything to endanger their own employees. Mr. Bailey said he feels that this is a safe location and that PGG has addressed all of the potentially dangerous issues. Mr. Bailey further said that PGG could not protect against terrorism; however, with the safety plan in place approved by the State Fire Marshal, Scott Goff, Mr. Bailey stated he felt the risk had been minimized.

Mayor Key invited citizens to address council in rebuttal of testimonies given. Police Chief Mike Gallaher, 305 W. Broadway, stated he wanted to assure Mr. Bailey he had been doing business with PGG all of his life and had no desire to create any hardships for their business, but that living four to five blocks from the proposed site of the tank, and after seeing videos portraying exploding tanks and knowing that a tank the size of the proposed facility would affect property owners for a one-mile radius, Chief Gallaher stated he felt it would be wiser to develop a site in a less populated area.

Mayor Key invited all those who spoke in opposition of the appellant and any other supporters. None approached.

Mayor Key asked if council had any questions. Councilor Humbert said that in the packet it was said that the operation would be done with one PGG employee. Councilor Humbert then asked if this facility would only fill bulk trucks. Mr. Bailey said this was the case, that they would not be filling small bottle units. Councilor Humbert asked why the tank would not be sited within close proximity of the PGG store. Mr. Bailey said he understood that PGG would have to go through the same process of notifying residents within 200 feet. PGG does have an industrial lot next to the proposed lot at this time. PGG chose the proposed lot to put better use to it as the retail store was getting pipe there. The proposed lot fulfilled all the measurements necessary to satisfy the State Fire Marshal's office. PGG would not have a problem locating the proposed tank on the industrial lot, but PGG would have to go through the same process, which may result in returning to council again.

Councilor Humbert said to City Planner Gina Hartzheim that he understood if PGG developed the industrial lot, they would not need a conditional use permit. Ms. Hartzheim said the conditional use permit would be needed due to the emissions from the tank.

Mayor Key declared the hearing closed.

Councilor Records motioned to uphold the appeal and deny the request for the conditional use permit. Councilor Saager seconded the motion. The motion passed with Councilors Saager, Lyon, Woods, Records and Kelley voting yea, and Councilor Humbert voting nay.

RESOLUTION NO. 1941 Budget Transfer. Finance Director Dave Richmond stated that in the approved budget this year, there is \$51,352 of capital improvements for a trail project at Yantis Park and the hill above, and 80% of that budgeted amount was coming from a grant and 20% was to come from the City in the amount of \$10,271. Mr. Richmond said that Grant Writer Mike Watkins reported we did not receive the grant for the trail project, leaving the \$10,271 in the budget to use. City Manager Delphine Palmer and staff would like to suggest that these funds be added to the Skatepark fund and there would be no change in the budgeted line item. Mr. Richmond then said that next year, the City would re-package the walking trail.

Councilor Kelley asked if the \$10,271 was added to the current skatepark budget, what would the total then be for the skatepark? Mr. Richmond said almost \$35,000. Councilor Wood wanted clarification asking if the money was going from capital improvement funds to capital improvement funds. Mr. Richmond said this was the case, that the funds would not be

transferred to any other line item. Councilor Woods then asked if there were any other capital improvements that the money could be used for. Mr. Richmond said there were several, but that the skatepark was the priority.

Councilor Kelley moved to adopt Resolution No. 1941 Transferring the \$10,271. from the Walking Trail fund to the Skate Park Fund. Councilor Lyon seconded the motion which passed unanimously.

APPROVAL Liquor License Application Blue Mountain Cider Company LLC. Assistant City Manager Linda Hall stated that the City had received an application for an exciting new business located in the former Seven Hills Winery at 235 E. Broadway Avenue. This is on behalf of the Blue Mountain Cider Company LLC, which will be a hard cider company. The application was received from Robbi and Mike Swinnerton and Gretchen and Ron Brown. The City's police department conducted a thorough investigation as they always do. This establishment will not have any on-premises sales; it is simply for off-premises distributors. Our police department staff nor any other staff member have any concerns regarding this new establishment, and therefore recommend that council approve this liquor license application.

Councilor Lyon asked for clarification in location. Councilor Saager asked if there would be a tasting room in the premises. Mike Swinnerton said no, there would not be a tasting room on site. Councilor Kelley stated the application said to sell beer and wine on premises, so asked for clarification from the applicant as to if they were or were not going to sell on the premises. Mr. Swinnerton said that if someone were to come in and purchase a 5-gallon pony keg, they would sell to an individual, but their intent was to distribute.

Councilor Kelley moved to approve the Liquor License application for Blue Mountain Cider Company LLC. Councilor Saager seconded the motion. Motion passed with Councilors Saager, Humbert, Woods, Records and Kelley voting yea, and Councilor Lyon voting nay.

DISCUSSION Official Newspaper for the City of Milton-Freewater. Assistant City Manager Linda Hall stated this issue is back before council as a result of their own motion about a year ago. The issue, as it first came before council in 2001, was hotly debated for over six months, resulting in an official newspaper designation to the Walla Walla Union Bulletin. This was due to the local newspapers lack of circulation for a full year, which is one of the State statute requirements. On August 26, 2002, council voted to appoint the Valley Herald as the City's official newspaper of record, but to review the decision in one year. In anticipation of this review, Ms. Hall sought the advise of City Attorney Doug Hojem as to what process to follow. Mr. Hojem's advice was to send notice to each of the area newspapers and ask them to indicate their interest in being designated as such, and if so, to provide to council their latest circulation figures. All four newspapers indicated they are interested in serving as Council's official newspaper and have attached their latest circulation figures. The Oregon State statute governing this designation is ORS 193.010. Ms. Hall read the requirements of this statute. After speaking with Mr. Hojem, his suggestion was to choose between the Valley Herald and the Blue Mountain Pioneer as they were the two locally published newspapers. Mr. Hojem then suggested council's consideration of circulation figures, and more specifically, what the circulation figures are for

Milton-Freewater subscribers and Milton-Freewater purchasers of that paper, in order to determine which paper was most effective for public notice purposes.

Mike Shepherd, publisher of the Blue Mountain Pioneer and Walla Walla Union Bulletin, stated his appreciation to be back in front of council to determine official newspaper status. As pointed out, Mr. Shepherd said he thought the City Attorney had correctly addressed the issues for council, and that both the Valley Herald and Blue Mountain Pioneer qualify. Circulation to Milton-Freewater should be given specific weight. The Blue Mountain Pioneer qualifies for this designation as an audited newspaper, which is also part of the ORS statute. Mr. Shepherd stated the most recent audit and circulation figures were part of the packet given to council.

Councilor Lyon asked for clarification regarding the circulation numbers including Athena and Weston versus the number just for Milton-Freewater. Mr. Shepherd said the 2,929 was the extracted zip code for Milton-Freewater only. Councilor Humbert asked if this zip code was 97862 and if so, included the surrounding area, not just the city limits. Mr. Shepherd concurred. Councilor Woods asked for clarification regarding the City Attorney's basis for decision, asking if the strongest basis for the decision would be circulation. Ms. Hall said that was correct. Councilor Kelley asked Mayor if council was to only discuss the newspaper issue, or was council to vote on the issue. Councilor Saager said he thought we may have to decide by next council meeting. Ms. Hall said he was correct as October 26th is the anniversary date, but technically, council could have two more weeks to decide.

Dennis Widmer, Valley Herald owner, opened with a review of what the law says. Reading from ORS 193.010, Mr. Widmer stated that circulation figures must be from paid subscribers for one full year and the Blue Mountain Pioneer does not have any paid subscribers. The paper is free within the Walla Walla Union Bulletin. Mr. Widmer addresses the issue of where the paper is published, and statutes require publication within the county. Then Mr. Widmer addressed the issue of council goals, addressing economic development and retention of local businesses. Mr. Widmer asked for continued support for the Valley Herald as the City's official newspaper of record.

Mike Shepherd, Blue Mountain Pioneer, reiterated the City Attorney's advice to make decision based upon ORS 193.010, and then Mr. Shepherd read the pertinent items of this statute.

Councilor Saager moved to continue with the Valley Herald as the City's official newspaper of record. Councilor Records seconded the motion. The motion passed with Councilors Saager, Lyon, Humbert, Woods and Records voting yea and Councilor Kelley voting nay.

MANAGER'S REPORT

City Manager Delphine Palmer, also filling in for Public Works Superintendent Howard Moss, stated she had been very involved with the Public Works department.

The responses from citizens for the Parks and Recreation department have been received. The citizen response was excellent with over 400 replies. Walking paths and bike trails were the leading issues of the survey.

An interesting problem came up in Public Works in that there is a problem on NW 5th Street due to a huge clog in the sewer pipe. The crew placed a camera in the pipe and found that a plumber had placed a 64-foot industrial type snake in the pipe, and the snake broke off. The plumber left the snake there without any notification to public works. After time, debris gathered around the snake. The public works employees made their own tools to clear the debris in this pipe, taking care of a problem that the City was very concerned about. Ms. Palmer acknowledged the Public Work crew for their creative efforts to solve a difficult problem.

The City went out to bid on the farm's hay, and the prices were set too high, so they will go out to bid again with a lower price.

We had more severe vandalism again in the restrooms at the softball field. We just finished painting the rooms and the crew had to paint them again this week. Painting the rooms has been done for three weeks running. To try to decrease excessive cost to the city, it has been decided to give a key to the person who is head of the soccer games and also to the school. They will open the restrooms when the games start and close them when they end. The police department will begin emphasis patrols on the restrooms at all the parks.

The police department will be conducting a campaign on the Neighborhood Watch program. This will be in addition to the volunteer police program.

Ms. Palmer said she hoped all had seen the pumpkin up on the water tower. Ms. Palmer said she discovered that Jim Olsen, Public Works mechanic, and his wife designed these lighting displays. Ms. Palmer said they draw the designs on their driveway and then the whole crew puts it together, and then the line crew helps put it up on the tower. Ms. Palmer said, "They just do an excellent job!"

Ms. Palmer said that the Mayor, Council and staff members should all be pleased because the City of Milton-Freewater received an award for our budget program from the Government Finance Officers Association. This is the twelfth year running the City has received this award. After reviewing budgets from other cities, Ms. Palmer said she thought the City of Milton-Freewater does a really fine job.

Councilor Woods asked about the progress at the substation. Ms. Palmer said she was amazed at the work the City crews were accomplishing. Ms. Palmer said that the forms could only be ¼ inch off and the crew has done an excellent job with everything fitting well.

Councilor Saager said he was very proud of the budget award, as it is not an award that all cities receive, and feels it shows great leadership.

COUNCIL ANNOUNCEMENTS

Councilor Records said the sign for the coffee shop was a good one.

Mayor Key said the registrations for League of Oregon City conference had to be in by October 17, 2003.

Councilor Woods asked if council was going to pursue the youth councilor position. Assistant City Manager Linda Hall said that Marilyn McBride had not contacted her with a name. Councilor Woods said she had given him a name and he would give the name to Ms. Hall after the meeting.

There being no further Council business, the meeting was adjourned at 8:10 p.m.

Lewis S. Key, Mayor